

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEWTON LIVING INC.,

Plaintiff,

Case No.:

-against -

**COMPLAINT**

SECURE BEGINNINGS LLC,

Defendant.

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Plaintiff NEWTON LIVING INC. formerly known as Newton Rest Inc. (“Newton”) for its Complaint against SECURE BEGINNINGS LLC (“Secure Beginnings”) alleges as follows:

### **NATURE OF THE ACTION**

1. Newton designs, markets and sells “breathable” crib mattresses under the Newton brand name.
2. Newton’s website contains a copyrighted article owned by Newton written by Dr. Jim Sears, a nationally renowned pediatrician and co-host of “The Doctors” television show. This article is entitled, Parenting Your Baby Against The Risk Of SIDS, and discusses the benefits of Newton’s mattresses. Secure Beginnings appropriated this article and reposted it on its Facebook page and website, omitting the positive references to Newton’s mattresses.
3. Newton seeks a permanent injunction and damages for Secure Beginnings willful, malicious and deliberate copyright infringement, as well as for deceptive trade

practices, unfair competition and misappropriation. Newton's claims arise and are asserted under the copyright laws of the United States, 17 U.S.C. § 101 et. seq., New York law and the common law.

### **JURISDICTION AND VENUE**

4. The Complaint alleges causes of action copyright laws of the United States, 17 U.S.C. § 101 et. seq., New York law and the common law.

5. The Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. §§ 1331 and 1338, and under the principles of supplemental jurisdiction, 28 U.S.C. § 1367.

6. Upon information and belief, Secure Beginnings is a Limited Liability Corporation, with its principal place of business located at 2699 Guoin Street, Detroit, Michigan. This Court has personal jurisdiction over Secure Beginnings because it conducts significant business in this District related to the unlawful activities at issue in this Complaint and the harm suffered by Newton flows directly from the business conducted by Secure Beginnings in this District. More specifically, Secure Beginnings has committed infringing acts outside of New York causing injury to Newton in New York; Secure Beginnings regularly does or solicits business in New York; and/or derives substantial revenue from goods used in New York; and/or expects or reasonably should expect its infringing conduct to have consequences in New York; and derives substantial revenue from interstate commerce. In addition, Secure Beginnings products are in the stream of commerce in New York and in this District and Newton is injured in New York by Secure Beginnings' infringing conduct.

7. Newton Living Inc. is a Corporation duly incorporated in the state of Delaware and duly authorized to do business in New York State with its place of business located at 295 5<sup>th</sup> Avenue, Suite 1121, New York, NY 10016. Newton Living Inc. was originally named Newton Rest Inc but subsequently and formally changed its corporate name to Newton Living Inc.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

### **FACTUAL BACKGROUND**


9. In or around August 2015, Newton and prominent Dr. Jim Sears (who is a co-host on the television show “The Doctors”) entered into a consulting agreement related to endorsement of Newton’s products and related materials. In connection with this agreement, Dr. Sears wrote an article entitled Parenting Your Baby Against The Risk Of SIDS, for publication on Newton’s website (the “Sears Article”). *See* Sears Article, attached as **Exhibit A**. Newton applied for, and received, copyright certification for this article. *See* Copyright Certification, attached as **Exhibit B**. Dr. Sears’ article discusses, among other things, the benefits of Newton’s crib mattresses and Newton considers this endorsement to be extremely valuable to them.

10. Upon information and belief, Secure Beginnings is in the business of, among other things, offering crib mattresses for sale over the internet. Secure Beginnings, a direct competitor of Newton, maintains a website, [www.securebeginnings.com](http://www.securebeginnings.com), as well as a Facebook page. Secure Beginnings has been, and is now, directly infringing on Newton’s copyrighted material by reposting the Sears

Article on its own website and Facebook page, only omitting any references to Dr. Sears' positive reviews of Newton's crib mattresses.

11. In or around November 2015, Newton discovered that Secure Beginnings was utilizing this copyrighted article on its website and Facebook page.

12. Secure Beginnings' website also contains the following chart, which intentionally and grossly misrepresents the features and characteristics of Newton's crib mattress:

 <b>COMPARE THE SECURE BEGINNINGS' BREATHABLE CRIB MATTRESS TO OTHERS</b>		Nook	Newton	*Organics	**Traditional
Freely breathable with NO fill to impede air flow	★				
Scientifically Proven to SIGNIFICANTLY Reduce CO <sub>2</sub> Rebreathing	★				
Passed Australia/New Zealand FIRMNESS testing	★				
No Fiber Fill to retain moisture or bacteria	★				
No quilting for greater oxygen flow	★				
No fiber fill to promote positive pressure points associated with skull deformities	★				
Completely and easily washable without removing a bulky mattress from the crib	★				
No risk of liquids leaking into fill or onto floor	★				
Naturally anti-microbial	★				
Naturally anti-mite	★				
Naturally anti-fireproof	★				
Naturally anti-fungi	★				
Hypoallergenic and free of off gassing	★	★	★	★	
First air permeable, organic, and 100% recyclable mattress	★				
Designed by a Pediatrician and a Safety Product Designer	★				
Sleep Surface that pulls liquids away from sleeping baby	★				
Need for water resistant chemicals		★		★	★
Prevents entanglement and wedging	★				
Available in several designs, finishes, and sleep surface colors	★				
The most scientifically tested crib mattress in the US	★				
The number one recommended and used crib mattresses by pediatricians for their own babies	★				

\* Average sampling of crib mattresses marketed as "organic".

\*\* Average sampling of conventional crib mattress with foam, synthetic fill, or other fiber fill.

See at <http://www.securebeginnings.com/compare-to-other-crib-mattresses>.

13. On November 20, 2015, Newton's attorney, Mark B. Stumer, wrote to Secure Beginnings legal department notifying it that it did not have the requisite rights to publish Dr. Sears' article and to cease and desist from publishing the Sears Article on its website and Facebook page. *See* First Cease and Desist letter along with its proof of delivery attached as **Exhibit C**. This letter was sent via FedEx delivery to Secure Beginnings and Secure Beginnings received and signed for the letter on November 23, 2015. Despite its receipt of said first "cease and desist" letter, Secure Beginnings ignored it and failed to respond to it in any way whatsoever.

14. Mr. Stumer again wrote to Secure Beginnings on December 17, 2015, providing them with yet a second cease and desist and letter again providing Secure Beginnings with detailed notice of their infringement of Newton's Sears Article. *See* Second Cease and Desist Letter along with its proof of delivery attached as **Exhibit D**. This Second Cease and desist letter was sent via FedEx delivery to Secure Beginnings and Secure Beginnings received and signed for the letter on December 19, 2015. Despite its receipt of said second "cease and desist" letter, Secure Beginnings ignored it and failed to respond to it in any way whatsoever.

15. Secure Beginnings knowingly and intentionally utilized the Sears' Article without Newton's permission or consent. These actions constitute infringement and misappropriation of Newton's copyright and have resulted and continue to result in damage and injury to Newton. Consequently, Secure Beginnings' actions negatively affect the reputation and desirability of Newton's crib mattress and significantly reduce its ability to profit from these products.

16. Secure Beginnings' violation of Newton's copyright requires the imposition of an injunction to prevent further infringement, and an award of damages for willful infringement and attorney's fees as authorized by U.S. Copyright Law.

17. In addition, on March 16, 2016, Mr. Stumer again wrote to Secure Beginnings again providing them with detailed notice of their infringement regarding the Sears Article and further informing them that the comparison chart contained on their website contains false and misleading information. Specifically, that the "checked" boxes for the Secure Beginnings mattress were either blatantly misleading or patently false and that the Newton's mattress possesses many of the positive features left unchecked on the chart by Secure Beginnings. This Third Cease and desist letter was sent via FedEx delivery to Secure Beginnings and Secure Beginnings received the letter on March 17, 2016. Despite its receipt of said third "cease and desist" letter, Secure Beginnings ignored it and failed to respond to it in any way whatsoever. *See* Third Cease and Desist letter along with its proof of delivery attached as **Exhibit E**.

### **COUNT I COPYRIGHT INFRINGEMENT**

18. Newton incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

19. This cause of action arises under the Copyright Laws of the United States, 17 U.S.C. § 101 et seq.

20. Newton has been well known in the marketplace for several years.

21. The Sears Article is wholly original and is copyrightable under the Copyright Laws of the United States, 17 U.S.C. § 101 et seq.

22. Newton has previously duly complied with the provisions of the Copyright Laws of the United States, and has secured rights and privileges in and to the Sears Article.

23. Newton has registered a copyright for the Sears Article under registration #TX8-226-544. Upon information and belief, Secure Beginnings having full knowledge of the copyright rights of Newton in the Sears Article infringed Newton's copyright rights by utilizing the Sears Article as its own in violation of Newton's rights under 17 U.S.C. § 106.

24. Secure Beginnings has, without authority from Newton Rest, reproduced the Sears Article and published it on its website and Facebook page. *See* <http://www.securebeginnings.com/single-post/2015/11/03/Protecting-your-baby-against-the-risks-of-SIDS-Dr-Jim-Sears>.

25. Even after receiving three notices regarding the copyright infringement, Secure Beginnings has elected to continue to use the Sears Article on its website and Facebook page.

26. Secure Beginnings' activities have caused harm to Newton, and Secure Beginnings has profited from its acts of infringement. Upon information and belief, the activities of the Secure Beginnings have diminished and will continue to diminish the exclusivity, inherent value and marketability of Newton's products.

27. All of the acts of Secure Beginnings as set forth in the preceding paragraphs were undertaken without permission, license, or consent of Newton, and are irreparably damaging to Newton.

28. Secure Beginnings' conduct was, and is, willful and malicious and constitutes intentional copyright infringement in violation of 17 USC §§ 106 and 501.

29. Newton has no adequate remedy at law.

30. As a direct and proximate result of Secure Beginnings' infringement, Newton has incurred damages, as described more fully above. Therefore Newton is entitled to recover the actual damages suffered by it as a result of the infringement, and any profits of Secure Beginnings that are attributable to the infringement and are not taken into account in computing the actual damages pursuant to 17 USC § 504(b), or, in the alternative, statutory damages for willful infringement in the amount of \$150,000, but no less than \$30,000, for each infringement of the Sears Article, as available under the law.

## **COUNT TWO PERMANENT INJUNCTION**

31. Newton incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

32. Secure Beginnings' conduct, as averred in this Complaint, is causing and, unless enjoined and restrained by this Court, will continue to cause Newton great and irreparable injury that cannot be compensated or measured in money.

33. Newton has no adequate remedy at law.

34. Pursuant to 17 USC § 502, Newton is entitled to a permanent injunction prohibiting further infringements of its copyright by Secure Beginnings.



**COUNT THREE**  
**DECEPTIVE BUSINESS PRACTICES**  
**(N.Y. GENERAL BUSINESS LAW §349)**

35. Newton incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

36. Secure Beginnings' aforesaid activities, including utilizing the Sears Article and omitting his positive reviews of Newton's mattress and publishing a comparison chart with false and misleading information regarding Newton's crib mattress as well as including misrepresentations about its own mattress, constitute deceptive acts or practices in the conduct of business trade or commerce or the furnishing of services in violation of New York General Business Law §349. Specifically, Secure Beginnings misrepresents that it is the most scientifically tested crib mattress and that it is the number one most recommended and used by crib mattress by pediatricians for their own babies.

37. Secure Beginnings' deceptive trade practices have caused Newton to suffer monetary damage, loss and injury.

38. Secure Beginnings' has engaged and continue to engage in these activities knowingly and willfully.

39. Secure Beginnings' deceptive trade practices, unless enjoined by the Court, will continue to cause Newton to sustain irreparable damage, loss and injury.

40. Newton has no adequate remedy at law.

41. Newton has been damaged by the acts of Secure Beginnings in an amount as yet <sup>[[ ]</sup><sub>SEP</sub> unknown, but believed to be in excess of One Million Dollars (\$1,000,000.00).

**COUNT FOUR**  
**UNFAIR COMPETITION AND MISAPPROPRIATION**  
**UNDER THE COMMON LAW**

42. Newton incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

43. Secure Beginnings' unlawful and improper actions as set forth above misappropriate and trade upon the fine reputation and goodwill of Newton thereby injuring that reputation and goodwill, and unjustly diverting from Newton to Secure Beginnings the benefits rightfully belonging to Newton.

44. Secure Beginnings' unlawful activities constitute unfair competition, and misappropriation as proscribed by the common law.

45. Secure Beginnings' acts of unfair competition and misappropriation have caused Plaintiff to sustain monetary damage, loss and injury.

46. Secure Beginnings has engaged, and continues to engage in, these activities knowingly and willfully.

47. Secure Beginnings' acts of unfair competition and misappropriation, unless enjoined by this Court, will continue to cause Newton to sustain irreparable damage, loss and injury.

48. Newton has been damaged by the acts of Secure Beginnings in an amount as yet <sup>[[ ]</sup><sub>SEP</sub> unknown, but believed to be in excess of One Million Dollars (\$1,000,000.00).

**COUNT FIVE**  
**DEFAMATION PER SE**

49. Newton incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

50. Secure Beginnings either published, or caused to be published, defamatory statements about Newton.

51. Specifically, these defamatory statements include posting a comparison chart indicating that Newton's crib mattress did not meet the same standards as the mattress created by Secure Beginnings and further falsely stated that did not have the same positive attributes as the mattress made by Secure Beginnings. More specifically, Newton's crib mattress is:

- Significantly proven to reduce CO2 rebreathing;
- Naturally anti-mite;
- Naturally anti-microbial; and
- Has a sleep surface that pulls liquids away from a sleeping baby.

52. Secure Beginnings published and continue to publish these statements on their website at <http://www.securebeginnings.com/compare-to-other-crib-mattresses>.

53. Newton notified Secure Beginnings that the statements contained on its chart are false and misleading.

54. These defamatory statements are untrue and defamatory in that they falsely reported the characteristics and features of Newton's crib mattresses.

55. Secure Beginnings published these statements with malice.

56. Secure Beginnings published these statements with knowledge of their falsity and/or with reckless disregard for the truth or falsity of these statements.

57. These statements constitute defamation or libel per se because they tend to injure Newton's business reputation because they falsely claim that Newton's mattress does not have certain positive attributes as listed above and further falsely states that

Newton's product fails to meet the same testing standards met by the Secure Beginnings' mattress.

58. As a result of Secure Beginnings' actions, Newton has been damaged in an amount as yet unknown, but believed to be in excess of One Million Dollars (\$1,000,000.00).

**COUNT SIX  
TORTIOUS INTERFERENCE WITH PROSPECTIVE  
BUSINESS RELATIONS**

59. Newton incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

60. Upon information and belief, Secure Beginnings has long been aware of Newton's business relationships with various customers Secure Beginnings, through malice, dishonest, unfair, or improper means, have interfered with reasonably expected business between Newton and its buyers and consumers, who would have made purchases from Newton.

61. Thus, Secure Beginnings has intentionally or with gross negligence interfered with Newton's ability to do business with such potential customers.

62. Secure Beginnings' actions were taken with the intention of disrupting Newton's business opportunities and thwarting Newton from increasing its revenue and reputation.

63. By reason of the foregoing, Newton continues to suffer harm and as a result of the acts of Secure Beginnings, has suffered financial injury in an amount not yet ascertained, but believed to be in excess of One Million Dollars (\$1,000,000.00).

**COUNT SEVEN  
FALSE ADVERTISING  
(GENERAL BUSINESS LAW §350)**

64. Newton incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

65. On the basis of the foregoing, Secure Beginnings has engaged and is engaging in consumer-oriented conduct that is deceptive or misleading in a material way, constituting false advertising in the conduct of any business, trade or commerce, in violation of New York General Business Law § 350.

66. As a result of Secure Beginnings' false advertising, Newton has suffered and continues to suffer substantial injury, including irreparable injury and damages, including but not limited to loss of sales and profits to Newton, which Newton would have made but for the false and deceptive advertising by Secure Beginnings.

67. Unless Secure Beginnings is restrained from such conduct, Newton will continue to lose sales and profits.

68. By reason of the foregoing, Newton continues to suffer harm and as a result of the acts of Secure Beginnings, has suffered financial injury in an amount not yet ascertained, but believed to be in excess of One Million Dollars (\$1,000,000.00).

**PRAYER FOR RELIEF**

**WHEREFORE**, Newton respectfully prays for judgment against Secure Beginnings as follows:

1. That the Court rule as follows:

a. That Secure Beginnings' use of Newton's Copyrighted Sears Article constitutes infringement;

b. That Secure Beginnings' use of the Copyrighted Sears Article was willful and deliberate;

c. That Secure Beginnings be preliminarily and permanently enjoined, along with its servants, employees, successors, licensees, transferees, representatives and/or assignees, and any persons in active concert or participation with them, from using, displaying, advertising, registering, transferring, or assigning the Sears Article;

d. That Newton be awarded damages in the amount that it has been harmed by Secure Beginnings' infringement and unfair business practices, in an amount to be proven at trial;

e. That Secure Beginnings be ordered to provide an accounting and disgorgement of their profits from their infringing and unfair business activity;

f. That Secure Beginnings' use of the Sears Article constitutes unfair competition;

g. That Secure Beginnings' use of the Sears Article constitutes false advertising;

h. That Secure Beginnings' use of the Sears Article constitutes tortious interference with prospective business relations;

i. As to all claims, that Newton be awarded statutory damages, including Secure Beginnings' profits and all actual damages trebled, reasonable attorneys' fees, costs, and pre- and post-judgment interest; and

j. That Newton be granted such other further relief as the Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Pursuant to Federal Rules of Civil Procedure 38(b), Newton demands a trial by jury.

Dated: September 27, 2016  
New York, New York

MARK B. STUMER & ASSOCIATES, P.C

By:



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